

February 2, 2004

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan Application Fees

Adopted Amendments: N.J.A.C. 7:50-1.6

Proposed: October 6, 2003 at 35 N.J.R. 4411(a)

Adopted: February 13, 2004 by the New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Filed: March 26, 2004 **with substantive and technical changes** not requiring
additional public notice

Authorized by: New Jersey Pinelands Commission.

Authority: N.J.S.A. 13:18A-6n.

Effective Date: April 5, 2004

Expiration Date: Exempt.

The New Jersey Pinelands Commission (Commission) is adopting amendments to Subchapter 1, General Provisions, of the Pinelands Comprehensive Management Plan (CMP). These amendments were proposed on October 6, 2003 at 35 N.J.R. 4411(a). The adopted amendments establish a fee schedule for certain development review applications filed with the Commission as required by the CMP.

In association with publication of the proposed amendments in the October 6, 2003 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to other interested parties, for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the public hearing to all persons and organizations which subscribe to the Commission's public hearing registry;

- Placed advertisements of the public hearing in the five official newspapers of the Commission, as well as on the Commission's own web page;
- Submitted the proposed amendments to the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f;
- Distributed the proposed amendments to the news media maintaining a press office in the State House Complex; and
- Published a copy of the proposed amendments on its web page at www.nj.gov/pinelands.

A formal public hearing was held before the Commission staff on November 17, 2003.

Although two people attended the hearing, oral testimony on the rule proposal was only provided by one individual.

Oral comments were recorded on magnetic tape which is on file at the Commission's office at 15 Springfield Road, New Lisbon, New Jersey. The record of this rulemaking is available for inspection in accordance with applicable law by contacting:

Betsy Piner
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064.

Summary of Public Comments and Agency Responses:

The Commission accepted written comments by regular mail, facsimile or e-mail on the October 6, 2003 proposal through December 5, 2003. The following persons

submitted written comments and/or made oral comments at the public hearing:

1. Bethea, T. Richard; Mayor, Bass River Township
2. Bullock, Thomas F.; National Forestry Association
3. Chiarello, Chuck; Mayor, Buena Vista Township
4. Duffy, Dennis; Duffy, Dolcy & McManus
5. Harkins, Joanne; The New Jersey Builders Association
6. Korth, Theodore J.; Pinelands Preservation Alliance
7. Mounier, Jay Edward;
8. Pikolycky, William; Mayor, Borough of Woodbine
9. Sachua, B.
10. Sartorio, Philip C.; Franklin Township Planning Board
11. Van Osten, Richard S.; Builders League of South Jersey

The Commission's response to the comments is set forth below.

General

1. **COMMENT:** The Commission's collection of modest fees to offset the costs involved with its required duties is long overdue. (6)
RESPONSE: The Commission acknowledges the commenter's support for the rules.
2. **COMMENT:** One commenter stated that the absence of an application fee results in costs associated with reviewing many large scale and commercial development applications being borne by taxpayers of the State. The commenter noted that although many people benefit from the Commission's work ensuring the proper and controlled use of the resources of the Pinelands, the absence of fees places the

entire burden on taxpayers and the Commission's budget allocation from the State. (6)

3. **COMMENT:** Another commenter indicated that the Pinelands Commission's staffing costs were substantial. It was the commenter's opinion that applicants should pay the full costs associated with the application review process. (9)
4. **COMMENT:** One commenter questioned why other taxpayers should have to fund development application review costs when such costs should properly be paid in their present worth by applicants. (9)

RESPONSE TO COMMENTS 2 through 4: The Commission acknowledges the commenters' support for the rules. The Commission agrees that individuals seeking to develop within the Pinelands should bear a share of the costs associated with reviewing their development applications. Society as a whole, however, does benefit from the efforts of the Pinelands Commission to promote orderly development of the Pinelands, and thereby preserve and protect the significant and unique natural, ecological, agricultural, archaeological, scenic, cultural and recreational resources of the Pinelands. Therefore, it is also appropriate for the State taxpayers to share in the support of the legislatively mandated activities of the Commission through the Commission's budget allocation. For the first 23 years of its operations, the Commission assessed no application fees for the review of development applications. The Commission believes that the proposed fee structure represents an appropriate first step in allocating a portion of its development review costs to those individuals who most directly benefit from its review activities.

5. **COMMENT:** One commenter expressed its opinion that the proposed regulations correctly and equitably place a portion of the costs of development with the entity proposing the development. (6)

RESPONSE: The Commission acknowledges the commenter's support for the rules.

6. **COMMENT:** One commenter disagreed with the statement in the Social and Economic Impact statements that the proposed fee schedule may cause a negative impact to entities seeking to construct in the Pinelands. The commenter felt that this statement was unjustified for two reasons. First, the proposed fees are very low and, in the context of the costs most applicants pay for locally assessed fees for development related requirements, the proposed fees are negligible and likely immaterial to most developments which will be affected. Second, the potential for any negative social or economic impacts to entities seeking to construct projects within the Pinelands due to an increase in permitting costs may well be offset by an increase in review capabilities of the Commission staff. This increase in review capacity and capability will in turn decrease the chances that compliance issues will go undiscovered during the review process, and will make the need for costly post-approval review less likely. By decreasing the cases where post-approval review is required, the net result of the proposed fee schedule may be socially and economically positive. (6)

RESPONSE: The Commission agrees that its proposed fees are modest and that the revenues generated by such fees will help to ensure that it has adequate resources to undertake its development application review responsibilities. The

Commission, however, does not currently assess application fees for the review of development applications. Consequently, the adoption of the proposed fee schedule will increase the costs, albeit modestly, associated with developing in the Pinelands. This could be perceived as a negative social and economic impact on applicants.

7. **COMMENT:** Another commenter felt that proposed fees would encourage development and would change the entire social fabric and environment of the Pinelands. The commenter opined that low fees encourage over-development and thereby impact negatively on the fragile environment that exists in the Pinelands.

(9)

RESPONSE: The Commission disagrees that its proposed fee schedule will encourage development within the Pinelands. The Commission does not currently assess application fees for the review of development applications. Therefore, its assessment of application fees will increase the costs associated with developing in the Pinelands and should not encourage development. More importantly, however, the Commission is charged with reviewing development applications to ensure that such applications are consistent with the minimum land use and environmental standards of the Pinelands CMP. Through such review, the Commission insures the continued protection of the Pinelands and its unique resources.

8. **COMMENT:** A number of commenters were concerned that under the proposed fee structure commercial applications appear to pay a disproportionate fee. These commenters suggested that the Commission amend the fee structure proposed at

N.J.A.C. 7:50-1.6(c) to step the fees for commercial applications. According to the commenters this would provide a better balance to the fee structure. The commenters also suggested better apportioning the fees among the various development review applications subject to a fee. (1), (3) & (8)

RESPONSE: The adopted fee structure represents a first step by the Commission to allocate a portion of its development review costs to those individuals who most directly benefit from its review activities. The Commission believes that its proposed fee schedule reflects an appropriate distribution of its costs among the various types of development applications that it receives. The commenters' concerns seem to be based on an assumption that the Commission receives and reviews multi-million dollar commercial development applications. Based on its review of a sampling of commercial applications submitted to the Commission in the recent past, this is infrequently the case. In addition, the review of large commercial development applications requires the allocation of significant staff resources. The Commission, however, recognizes the importance of developing more data to determine whether the fees assessed to commercial development applications are disproportionate to the level of review required for such applications. The Commission has decided to adopt the fee requirements for commercial, institutional, industrial or other non-residential development applications as proposed at this time and intends to gather additional data in a continuing effort to assess the commenters' concerns. The Commission will continue to monitor this fee and should it determine that it is, in fact, disproportionate, the issue will be addressed in a future rulemaking.

9. **COMMENT:** Three commenters suggested that the Commission amend the proposed rules to include a \$30,000 cap on fees. (1), (3) & (8)

RESPONSE: As discussed in its response to Comment 8 above, the commenters' concerns seem to be based on the assumption that the Commission receives and reviews multi-million dollar development applications. At this time, the Commission does not anticipate receiving any single application that would generate a fee in excess of \$30,000. Nevertheless, the Commission recognizes the importance of developing data to continue to assess the commenters' concerns. The Commission intends to continue to monitor the fee schedule and, should imposition of a cap prove to be warranted, the issue will be addressed in a future rulemaking.

10. **COMMENT:** A number of commenters were concerned that the Commission's decision to charge application fees would have a negative impact on the level of the Commission's State appropriation. The commenters suggested that the Commission amend the proposed rules to add a clause indicating that if the imposition of fees results in a reduction in the Commission's appropriation, the fees would be eliminated. (1), (3) & (8).

RESPONSE: The Commission does not expect that its decision to charge application fees will negatively impact on the level of its appropriation in the State budget. The fee schedule that was proposed is modest and is expected to recapture less than half of the direct costs that the Commission expends annually on the review of development applications. This recapture rate drops dramatically when indirect costs, such as office space, equipment, supplies, etc.

are factored in. As a result, the Commission does not believe that amending the rules as suggested by the commenters is warranted.

11. **COMMENT:** One commenter questioned the need for the Commission staff to automatically conduct detailed reviews of all applications for developments proposed in any Pinelands municipality with a certified master plan and land use ordinance. Site plan and subdivision applications are reviewed by the municipal professionals and Planning Board for compliance with ordinances, including Pinelands standards. According to the commenter, in cases where the application requires no variance from Pinelands standards, Commission review is unnecessary and redundant. (10)
12. **COMMENT:** Two other commenters questioned the Pinelands Commission's role in the review of development applications involving development in municipalities with certified master plans and land use ordinances. One commenter opined that the Commission has been undertaking development review functions beyond its legislatively mandated activities. This commenter indicated that no fee is warranted for the more limited functions of issuing Certificates of Filing and the Commission's review of municipal and county actions because almost all costs involved in the review of development applications should be incurred at the municipal and county level. This commenter suggested that the number of Commission personnel needed for development review should be significantly reduced.

Another commenter opined that the role of the Pinelands Commission in the review of development applications is to ensure that all required information

is submitted and, upon establishing completeness, to issue a Certificate of Filing. According to this commenter, under the provisions of the Pinelands Protection Act and the CMP, the municipalities and counties are the entities given the responsibility to review development applications to ensure that they are in conformance with the local ordinances, development regulations and Pinelands CMP. The Pinelands Commission retains “call up” authority in the event that a municipality or county were to grant an approval in violation of the Pinelands CMP. It was this commenter’s opinion that the Commission had used the Certificate of Filing completeness process and review of local approvals as a de facto Pinelands development review and approval process. The commenter suggested that it was time for the Commission to discontinue this practice of de facto review and to allow the development application review and approval process to proceed as intended in the Act and the Pinelands CMP. (5) & (11)

RESPONSE TO COMMENTS 11 and 12: The Commission disagrees with the commenters' characterization of its role in the development application review process as merely clerical. This characterization renders the submission of an application to the Commission redundant and superfluous. Clearly the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. and the Pinelands CMP, N.J.A.C. 7:50, envisioned that submission of an application to the Commission would involve more than an administrative rubber stamp indicating that all required information was included in a specific application. If that were the case, an applicant could file its application directly with the local permitting authority and the local authority could determine whether it was administratively complete. The

Pinelands CMP, however, requires an applicant to complete an application with the Commission prior to filing an application with any local permitting authority. In contrast to the commenters' characterization of the Commission's role, the Pinelands Protection Act and the Pinelands CMP have tasked the Commission with the responsibility to insure orderly development within the Pinelands so as to preserve and protect the areas unique resources. As part of this charge, the Commission is required under the Pinelands CMP to undertake a substantive review of development applications to make sure that the proposed developments conform with the minimum land use and environmental standards of the Pinelands CMP. Moreover, over the years, many municipal officials and development applicants have requested that the Commission undertake a more substantive review of development proposals early in the review process so as to minimize the number of issues that arise late in the permit approval process. Finally, the Pinelands CMP does provide an opportunity for municipalities to exercise additional decision making authority regarding development review applications through Alternative Local Permitting Programs. The Commission has approved 19 such programs to date and hopes to involve additional municipalities in this effort in the future.

13. **COMMENT:** One commenter objected to the proposed fees and indicated that the fees should be rejected. (11)

RESPONSE: The Commission disagrees. The Commission believes that the proposed fee structure represents an appropriate first step in allocating a portion of its development review costs to those individuals who most directly benefit

from its review activities.

14. **COMMENT:** One commenter felt that the proposed fees were too low and suggested that the rules be amended to increase a number of the fees.

Specifically, the commenter suggested modifying the fees as follows: 1) increasing the fee for each residential unit to \$1,000; 2) increasing the minimum fee for commercial development to \$2,000; 3) increasing the fee for a letter of interpretation to \$750; 3) increasing the fee for a letter certifying that a proposed activity is not considered development to \$500; 4) increasing the fee for a letter stating information that is available in a municipal land use ordinance or readily available from a source other than the Pinelands Commission to \$350; and 5) increasing the fee for an Amended Certificate of Filing to \$500. (9)

RESPONSE: The proposed fee schedule represents the Commission's first step in allocating a portion of its development review costs to those individuals who most directly benefit from its review activities. The Commission recognizes that this first step is a modest one. However, given that the Commission has not charged application fees in the past, the Commission has elected to proceed in a conservative manner and continues to believe its proposed fee schedule is appropriate.

15. **COMMENT:** One commenter indicated that the proposed regulations should not provide exemptions to the fees. The commenter stated that if application fees are appropriate at all for development in the Pinelands, all development that causes permanent changes to the landscape and permanent impacts on the resources of the Pinelands should be subject to application fees. (7)

RESPONSE: The Commission disagrees. The intent of the proposed fee schedule was to allocate a portion of the Commission's development review costs to those individuals who most directly benefit from its review activities. The fees were not intended to address the level of impact that a development may have on the resources of the Pinelands, but were designed to recapture a portion of the administrative costs associated with reviewing various types of development applications. The Commission continues to believe that it is appropriate to exempt certain types of applications from the fee requirements.

N.J.A.C. 7:50-1.6(a)

16. **COMMENT:** One commenter indicated that the rules should not contain an exemption for development applications submitted by public agencies. According to the commenter, development includes most development projects proposed by public agencies. The commenter questioned if the resources of the Pinelands must be protected for the benefit of the people, why would development by "the People" be properly exempted from fees that are needed to maintain the operation of the Commission. The commenter stated that the cost of the protection of Pinelands resources should be borne as equally as possible by all the people, especially when the proposed development is for public purposes. (7)

RESPONSE: The Commission disagrees. As discussed in its response to Comments 2 through 4 above, the proposed fee schedule is modest and only recaptures a fraction of the funds expended annually by the Commission on the review of development applications. As a result, the taxpayers of the State of New Jersey will continue to share in the support of the legislatively mandated

activities of the Commission through the Commission's State budget allocation.

The Commission believes that this is appropriate, because Society as a whole benefits from the efforts of the Pinelands Commission to promote orderly development of the Pinelands, and thereby preserve and protect the significant and unique resources of the Pinelands. Furthermore, although the Commission did not charge fees in the past, the prior fee provision, former N.J.A.C. 7:50-1.6, always exempted applications submitted by public agencies from fees.

N.J.A.C. 7:50-1.6(b)

17. **COMMENT:** Two commenters indicated that an exemption from application fees should not be provided for residential development projects consisting of only one dwelling unit. One of the commenters stated that permanent changes to the landscape of the Pinelands should not be exempted from the collection of fees, if fees are truly required for the continuing operation of the Commission's business. These permanent landscape changes include residential development projects consisting of only one dwelling unit. The commenter indicated that given the modest fees that were proposed for residential development in relation to all other costs associated with home-building today, he found no reason to exempt 70% of the residential development projects submitted to the Commission from the collection of fees that are needed to support Commission operations. (7) & (9)

RESPONSE: The Commission disagrees. The intent of the proposed fee schedule was to allocate a portion of the Commission's development review costs to those individuals who most directly benefit from its review activities. The fees were not intended to address the level of impact that a development may have on

the resources of the Pinelands, but were designed to recapture a portion of the administrative costs associated with reviewing various types of development applications. In taking this first step, the Commission decided not to assess an application fee for these applications. The Commission continues to believe that it is appropriate to exempt certain types of applications from the fee requirements.

18. **COMMENT:** One commenter indicated that the fees assessed to major subdivisions should be amended to bring them into proportion with the fees charged for commercial applications. (3)

RESPONSE: The Commission disagrees. Based on its experience with the review of large residential developments, the Commission believes that the review of larger residential subdivisions requires less review time than the review of several smaller residential projects. As stated earlier, the Commission will continue to evaluate this matter relative to commercial developments and consider a future rule change, if warranted. 19. **COMMENT:** One commenter questioned whether proposed N.J.A.C. 7:50-1.6(b)1, which establishes an exemption from application fees for development applications consisting of one dwelling unit, applies to Preliminary Zoning Permits that may be issued by a Local Review Officer pursuant to an alternate permitting program established pursuant to N.J.A.C. 7:50-3, Part VIII. According to the commenter, some communities charge a fee for this to offset the salary of the Local Review Official. (10)

RESPONSE: The proposed regulations only apply to applications submitted to the Commission. The proposed fee structure does not apply to applications for development submitted directly to a municipality pursuant to an alternative local

permitting program that has been certified by the Commission. A municipality with such a permitting program may continue to assess such fees as it believes are reasonable and necessary for the review of application for Preliminary Zoning Permits.²⁰ **COMMENT:** A number of commenters indicated that the fee structure for residential development should be flattened. One of the commenters stated that the fee should be the same regardless of whether the development application is for one house or for 200 homes. Another commenter noted that the proposed residential fees seemed to be to the advantage of larger developments since the sliding scale places a greater cost burden on smaller developments than on larger ones. It was the opinion of this commenter that the last unit in a larger scale development would have the same impact and require the same level of review as the first. As a result, the commenter suggested that if a residential development application fee is to be imposed, it should be kept at a flat rate for all residential development applications. A third commenter stated that each dwelling unit or lot constitutes a separate, lasting impact on the resources of the Pinelands and should receive all appropriate development review. As a result, the commenter stated that no "volume discounts" of development application fees should be offered if the collection of fees is needed at all. According to the commenter, given the modest fees that are proposed for residential development in relation to all other costs associated with home-building today, the commenter found no reason to offer reduced application fees for large residential development applications. (7), (9) & (10)

RESPONSE: The Commission believes that the fee structure for residential

development

applications is appropriate as proposed. The Commission disagrees that the level of

review associated with an application for the last unit in a large-scale development

application would be the same as for the first. Although large residential subdivisions do

require the expenditure of some additional resources to review, such expenditure is

proportionately less than the level of review required for several smaller residential

developments. Moreover, the fees were not intended to address the level of impact that a development may have on the resources of the Pinelands, but were designed to recapture a portion of the administrative costs associated with reviewing various types of development applications.

N.J.A.C. 7:50-1.6(c)

21. **COMMENT:** In regard to proposed N.J.A.C. 7:50-1.6(c), one commenter noted that because payment of the proposed fee is required prior to completion of construction, the true costs of construction might not be easily ascertained at the time the fee is due. The commenter suggested that this subsection be clarified on adoption to state that the required fee is based on the estimated cost of construction as proffered by the applicant and supported by an accepted project bid reflecting the construction costs, the sworn statement of a licensed architect or

engineer as to the expected construction costs, or project financing documents submitted to a lending institution which reflect the anticipated cost. (6)

RESPONSE: The Commission agrees that it may be difficult to ascertain the actual costs of construction at the time that a commercial, institutional, industrial or non-residential development application is submitted to the Commission. The types of clarifications suggested by the commenter should make it easier for an applicant to calculate the appropriate application fee for such an application. Therefore, the Commission has decided to clarify N.J.A.C. 7:50-1.6(c) on adoption to require an architectural or engineering certification or financing documents to estimate the costs. Since development proposals should be submitted for review well before they are put out to bid, bid documents will not be requested.

22. **COMMENT:** A commenter, with regard to proposed N.J.A.C. 7:50-1.6(c) questioned whether the term, as used in this provision, refers to site improvements alone or site improvements and building improvements. The commenter suggested that the term “construction costs” be defined on adoption. (4)

RESPONSE: The Commission in proposing N.J.A.C. 7:50-1.6(c) intended for the term “construction costs” to have its common meaning, i.e. all costs associated with the development of the project for which an application is being submitted. This would include costs associated with both site and building improvements. The Commission is revising this provision on adoption to make its intent clear.

23. **COMMENT:** With regard to proposed N.J.A.C. 7:50-1.6(c) 1 & 2, one commenter opined that, because both off-road vehicle events regulated under N.J.A.C. 7:50-6.143(a)4 and forestry activities regulated under N.J.A.C. 7:50-6.43(b) and (c) do not involve permanent development in the Pinelands but, rather, somewhat short-term land uses, application fees for these activities are inappropriate. Recreational uses and forestry are both recognized as traditional land uses that are to be encouraged as consistent according to the CMP. (7)

RESPONSE: Although off-road vehicle events and forestry activities may only constitute short-term land uses, these activities are regulated by the Pinelands CMP. Applications for these activities are required by the Pinelands CMP and, as such, require review by the Pinelands Commission staff to determine their consistency with the minimum standards of the Pinelands CMP. Consequently, the Commission believes that it is appropriate to charge application fees for these activities.²⁴ **COMMENT:** One commenter stated that the fee proposed in N.J.A.C. 7:50-1.6(c)2, \$5 per acre for forestry activities regardless of the scope of the number of acres involved in such application, is inconsistent with the requirement of the New Jersey Administrative Procedure Act. According to the commenter, the proposed fee lacks the requisite nexus to the public end to be achieved, because the proposed fee is not proportionate to the level of review required for such applications. The commenter stated that forestry applications in the Pinelands are reviewed pursuant to a Memorandum of Agreement with the New Jersey Department of Environmental Protection, Division of Parks and Forestry and that unless there was a mechanism to transfer the fee collected to the

Forest Fire Service, the commenter was not sure why there should be a fee for processing forestry applications with the Pinelands Commission. (2)

RESPONSE: The Commission disagrees that the proposed fee for forestry activities lacks the nexus required by the Administrative Procedure Act. The fee proposed at N.J.A.C. 7:50-1.6(c)2 is modest, \$5.00 per acre of land that is subject to forestry activities, and only becomes applicable when a forestry project involves ten or more acres of land. Most of the forestry applications submitted to the Commission involve projects of between 25 and 100 acres. This would result in fees between \$125 and \$500. Moreover, these applications require review by the Commission for consistency with the minimum standards of the Pinelands CMP. Therefore, the Commission believes that it is appropriate to charge an application fee for this type of development and, moreover, that the range of likely fees described above is entirely reasonable.

25. **COMMENT:** With regard to proposed N.J.A.C. 7:50-1.6(c)2, one commenter noted that the regulations seem to be directed to development activities. According to the commenter, with the advent of the Stewardship program and with dynamic development, forestry is less and less a development activity as time goes by. The commenter stated that forestry is actually a low intensity agricultural activity, the way that it is discharged and conducted in the pines. As a result, the commenter stated that, because the regulation seems to be oriented toward review fees for development activities, which will have a more serious rather than restorative impacts on the pines, it should not apply to forestry. (2)

RESPONSE: Under the Pinelands CMP, forestry activities require Commission review,

with the exception of those activities expressly exempted at N.J.A.C. 7:50-4.1(a)16. Although the impacts associated with forestry may be less than and certainly are different from the impacts associated with other types of development, the Pinelands CMP requires that forestry activities be reviewed for consistency with the minimum standards of the Pinelands CMP. Therefore, the Commission believes that it is appropriate to charge an application fee for this review. It should also be noted that forestry activities proposed on lands enrolled in the New Jersey Forest Stewardship Program are exempt from the application requirements of the CMP pursuant to N.J.A.C. 7:50-6.43(a) and a 1997 Memorandum of Agreement between the Commission and the Department of Environmental Protection, Division of Parks and Forestry. Such activities are likewise exempt from the fee requirements set forth in N.J.A.C. 7:50-1.6(c)2.26.

COMMENT: One commenter stated that under State law (the Farmland Assessment Act), land that is used for forestry under a Woodland Management Plan is assessed as agriculture. The commenter noted that N.J.A.C. 7:50-1.6(c) appeared to set different fees for forestry than agricultural activities. According to the commenter, both of these activities help to protect landscape characteristics that are unique to the Pinelands. As a result, the commenter recommended that the fees for agricultural and forestry activities should be the same and that any fee assessed should be based on a method of calculation that generates the lowest cost to the applicant. (10)

27. **COMMENT:** Another commenter stated because forestry is more of a restorative, agricultural activity, it should be treated as agriculture for the

purposes of the imposition of fees and review by the Commission. (2)

RESPONSE TO COMMENTS 26 and 27: See response to Comment 25 above.

28. **COMMENT:** With regard to proposed N.J.A.C. 7:50-1.6(c), a commenter questioned whether agricultural activities would be classified as “other non-residential” development for the purposes of calculating the applicable application fee. (10)

RESPONSE: Under the Pinelands CMP, activities which are exclusively for agricultural purposes do not require an application to the Commission and, therefore, would not be subject to a fee. To the extent that a development activity is not exclusively for agricultural purposes and will require the submission of development review application, the applicable application fee will depend upon the type of activity proposed.

29. **COMMENT:** One commenter requested clarification of the meaning of the term “associated forested areas” in proposed N.J.A.C. 7:50-1.6(c)3. The commenter questioned whether the term included the entire remainder of a parcel proposed to be developed as a golf course or whether it excluded areas that remain undisturbed, such as, perimeter buffers, wetlands/wetlands buffers, etc. (10)

RESPONSE: The intent of the Commission in providing a descriptive list in proposed N.J.A.C. 7:50-1.6(c)3 and using the term “associated forested areas” was to include all areas associated with the planning, construction, operation or maintenance of a golf course facility, not just those areas directly associated with golfing or a recreational activity. As a result, to the extent that undisturbed lands, such as perimeter buffers, wetlands/wetland buffers are considered to be part of

the golf course facility, such areas must be included in any acreage calculation used to calculate the applicable application fee.³⁰ **COMMENT:** One commenter noted that a “golf course facility” may include areas not directly associated with golfing or recreational activities. The commenter stated that, although the descriptive list contained within proposed N.J.A.C. 7:50-1.6(c)3 is non-exclusive, it is important that this section be clarified on adoption to make it clear that non-recreational areas associated with the planning, construction, operation or maintenance of such facility must be included in any acreage calculation used to calculate the applicable application fee for the development of a golf course. (6)

RESPONSE: As discussed in its response to comment 29, the Commission intended to include all areas considered part of a golf course facility, not just those areas directly associated with golfing or a recreational activity, in the acreage used to calculate the fee for such facility in accordance with proposed N.J.A.C. 7:50-1.6(c)3. Based on the comments that the Commission received on this provision, it appears that clarification of this intent on adoption is warranted. Consequently, the Commission has decided to amend this provision on adoption to incorporate the language suggested by the commenter.

31. **COMMENT:** One commenter indicated that proposed N.J.A.C. 7:50-1.6(c)3 appeared to be punitive and intended to discourage golf course development. The commenter stated that, although golf courses may have significant adverse impacts on the resources of the Pinelands, those impacts may very well be small compared with alternate development projects that might be built in their stead,

especially residential development. (7)

RESPONSE: As discussed in its response to comment 15, the intent of the proposed fee schedule was not to address the level of impacts associated with a particular development application, but rather to allocate a portion of the Commission's development review costs to those individuals who most directly benefit from its review activities. The Commission continues to believe that proposed fees for golf course applications are reasonable, given the significant amount of staff time that is required for the review of these applications.

32. **COMMENT:** A commenter with regard to proposed N.J.A.C. 7:50-1.6(c)4 indicated that this provision anticipates setting a fee for linear developments based on "per acre of the right-of-way to be disturbed". According to the commenter, depending on the nature of the linear development, the area actually disturbed may be lesser or greater than the area of the legally provided right-of-way. The commenter suggested that this provision should be amended on adoption to make clear that calculation of the application fee for a linear development will be based on the acreage of the right-of-way itself, plus any area outside the right-of-way which may be disturbed as a result of the development process.

RESPONSE: The Commission's intent in proposing the fee for linear development at N.J.A.C. 7:50-1.6(c)4 was to include all areas disturbed as part of a linear development project in the acreage used to calculate the applicable fee. Based on the comment, it appears that this intent is not clear in the rule language as it was proposed. As a result, the Commission is clarifying this provision on adoption

consistent with the commenter's suggested language.³³ **COMMENT:** One commenter opined that the application fee proposed at N.J.A.C. 7:50-1.6(c)6 for a change of use without development was nothing more than exaction of a payment because the Commission has the authority to do so. (7)

RESPONSE: The Commission disagrees. The proposed fee structure represents a first step in allocating a portion of its development review costs to those individuals who most directly benefit from its review activities. A change of use, even without development, requires a review of the new use to insure that such use is consistent with the minimum standards of the Pinelands CMP.

Consequently, the Commission believes that it is appropriate to assess what amounts to a very modest application fee for this review.

N.J.A.C. 7:50-1.6(f) & (g)

34. **COMMENT:** A commenter indicated that proposed N.J.A.C. 7:50-1.6(f) & (g) appeared to be punitive. The commenter suggested that if the Commission wishes to discourage the regulated public from asking vain questions, a carefully worded response statement be crafted by the Public Affairs office explaining where the requested information may be found and asking the questioner to obtain the requested information from that source. According to the commenter, the response statement could be read to each questioner in a few moments, providing an opportunity for real public education rather than fund raising. (7).

RESPONSE: The Commission disagrees. The Commission will continue to respond to telephone calls from the public seeking information regarding whether a proposed activity constitutes development under the Pinelands CMP or for

information available in a municipal ordinance or readily available from some other source. Some requesters, however, are not satisfied with a verbal response and prefer to receive an official written response from the Commission rather than the primary source. In these cases, the Commission is required to allocate development review resources to responding to these requests in writing. Consequently, the Commission believes that it is appropriate to assess an application fee in these cases.

N.J.A.C. 7:50-1.6(i)

35. **COMMENT:** A commenter stated that proposed N.J.A.C. 7:50-1.6(i) gives the Executive Director virtually unbridled discretion (except in cases of minor residential development) in cases involving “complex issues” to hire outside experts and charge their fees to the applicant. (11)

RESPONSE: The Commission disagrees. N.J.A.C. 7:50-1.6(i) as proposed makes it clear that the Executive Director may only seek an escrow amount from an applicant in those cases, other than an application for a minor residential development, where the application involves complex issues, which because of the need for specialized expertise, necessitate the retention of consultants to assist in the review of such application. It is not the Commission’s intent to seek an escrow payment for routine matters such as a conventional 30 lot residential subdivision.³⁶

COMMENT: One commenter opined that there is no statutory authority for proposed N.J.A.C. 7:50-1.6(i). The commenter stated that Section 30 of PL 2003, c. 117, which authorizes the Commission to adopt a “fee schedule”, says nothing about open ended fees to be paid by applicants to

Commission consultants. (11)

RESPONSE: The Commission disagrees. N.J.S.A. 13:18A-6n authorizes the Commission to “establish and change, ..., reasonable fees for services performed relating to development review applications filed with the Commission...”

Clearly, this provision authorizes the assessment of fees for any services performed that relate to the review of development applications. This would include the retention of experts to assist the Commission in the review of development applications.

37. **COMMENT:** Another commenter stated that N.J.A.C. 7:50-1.6(i) appears to require the escrow to be terminated “at the time the applicant receives final municipal approval” of the proposed development. The commenter noted that the Commission may be required to review the proposed development after final municipal approval has been granted and that this may be the very time when specialized experts are most needed. The commenter further noted that the purpose of this escrow provision is to provide for the costs associated with the Commission’s duty to conduct a proper review of a proposed development and that the Commission’s review duties extend through the final approval review period. Although a final municipal approval is not effective until the final approval review period has passed, the commenter recommended that this provision be clarified to make it clear that the escrow will continue through the Commission’s final review period, and will not terminate upon the occurrence of final municipal approval.

RESPONSE: The Commission’s intent in proposing N.J.A.C. 7:50-1.6(i) was to

insure that it would have the resources necessary to retain consultants to assist in its review of development applications that contain complex issues requiring specialized expertise. The intent was that these funds would be available until the Commission had finished its review of the applicable development, i.e. through its review of any approvals issued by the local permitting authority. The Commission, therefore, is revising N.J.A.C. 7:50-1.6(i) on adoption to make this intent clear.

Summary of Agency-Initiated Changes:

The only modifications to the rules upon adoption have been made in response to public comments and are discussed under the applicable comments above.

Federal Standards Analysis

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The adopted amendments establish a fee schedule for certain development review applications. These amendments do not amend any of the provisions of the CMP that implement the Federal goals of the CMP. As a result, the Commission has concluded that these amendments do not exceed any Federal standards or requirements.

There are no other Federal requirements which apply to the subject matter of these amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks “*[thus]*”).):

(a) All applications required or permitted by any provision of this Plan other than applications filed by a public agency, shall be accompanied by a nonrefundable application calculated according to the fee schedule set forth in (b) through (i) below. No application filed pursuant to this Plan shall be reviewed or considered complete unless all fees required by this Part have been paid.

(b) The fee for a residential development application submitted pursuant to N.J.A.C. 7:50-4.14 or 4.33 shall be calculated as follows:

1. There shall be no fee for a residential development consisting of only one dwelling unit; and
2. The fee for all other residential developments shall be calculated based on the number of proposed dwelling units or lots according to the following:
 - i. \$100 per dwelling unit or lot for the first 25 units or lots;
 - ii. \$75 per dwelling unit or lot for units/lots 26 through 100; and
 - iii. \$50 per dwelling unit or lots for all units/lots in excess of 100.

(c) The fee for a commercial, institutional, industrial or other non-residential development application submitted pursuant to N.J.A.C. 7:50-4.14 or 4.33 shall be \$200 or 1% of construction costs*, **which shall include all costs associated with the**

development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs,* which ever is greater, except as provided in (c)1 - 7 below*. For fees calculated based on 1% of construction costs, such costs shall be supported by the sworn statement of a licensed architect or engineer as to the expected construction costs or project financing documents submitted to a lending institution which reflect the anticipated cost.*:

1. For an off-road vehicle event conducted in accordance with N.J.A.C. 7:50-6.143(a)4, the fee shall be \$5 per mile of the route proposed or a minimum of \$250;
2. For a forestry application or renewal application, submitted pursuant to N.J.A.C. 7:50-6.43(b) or (c), for forestry activities involving 10 or more acres, the fee shall be \$5 per acre that is subject to the forestry activities;
3. For the development of a golf course, the fee shall be \$100 per acre devoted to the golf course facility, including but not limited to the golf course and associated forested areas, club house, putting greens, driving range, parking areas, locker rooms and accessory buildings, such as rest rooms, maintenance buildings, and other recreational areas depicted on the site plan submitted as part of the application. **All areas associated with the planning, construction, operation or maintenance of a golf course facility, including those areas not directly associated with golfing or a recreational activity, must be included in the acreage used to calculate the applicable application fee for the development of a golf course*;**
4. For a proposed linear development, the fee shall be \$100 per acre * [of the right-of-way]* ***to be disturbed as part of a linear development project *** or a

minimum of \$250. "Linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission or distribution lines, which have the basic function of connecting two points, the rights-of-way therefor, and any accessory structures or uses directly associated therewith. Linear development shall not include residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads;

5. For a resource extraction permit application or permit renewal application, The fee shall be \$500 plus \$10 per acre to be mined within each permit period;

6. For a change of use with no additional development, the fee shall be \$200; and

7. For an application for a subdivision only, without development, the fee shall be calculated according to the formula in (b)2 above, based on the number of lots created.

(d) The fee for mixed residential and non-residential development shall be the sum of the residential and non-residential development fees as calculated according to the relevant fee schedules in (b) and (c) above.

(e) For a Letter of Interpretation or Amended Letter of Interpretation pursuant to N.J.A.C. 7:50-4, Part VI, which does not involve the allocation of Pinelands Development Credits, the fee shall be \$200.

(f) The application fee for the review and processing of a request for a letter certifying that a proposed activity is not considered development pursuant to N.J.A.C. 7:50-4.1(a) shall be \$100.

(g) The application fee for the review and processing of a request for a letter stating information that is available in a municipal land use ordinance or stating other information readily available to the public from a source other than the Pinelands Commission shall be \$100.

(h) The fee for an Amended Certificate of Filing shall be \$150 or 10% of the original permit fee, whichever is greater, with a maximum fee of \$2000. If a request for an Amended Certificate of Filing is submitted more than 5 years following the issuance of the original Certificate of Filing, the fee shall be calculated as if a new application had been submitted.

(i) If the Executive Director determines that a development application, excluding an application for a minor residential development, involves complex issues which, because of the need for specialized expertise, necessitate the retention of consultants to assist in the review of such application:

1. The Executive Director shall notify the applicant of such determination and the escrow amount to be submitted;

2. Monies submitted pursuant to (i)1 above shall be held in an escrow account and shall be used by the Commission to reimburse any costs it incurs as a result of

retaining any consultants for that application;

3. Should the funds held in escrow be insufficient to defray the costs of any consultants, the Executive Director will provide the applicant with a statement of the account and will request from the applicant the additional amount estimated to be required for the escrow account;

4. At the time *[the applicant receives]* ***that*** the final municipal approval ***takes effect pursuant to N.J.A.C. 7:50-4, Part III***, the Executive Director shall provide a statement of the account to the applicant and any funds remaining in the escrow account shall be returned to the applicant;

5. No additional review of the application will occur until the escrow amount requested pursuant to (i)1 or 3 has been submitted; and

6. An applicant who objects to the escrow amount requested pursuant to (i)1 or (3) above, shall notify the Executive Director, in writing, within 15 days of receipt of the Executive Director's determination, of such objection and shall include with this notification an estimate from a qualified professional, having the requisite knowledge and expertise required to address the issues raised by the application, to support the applicant's estimation of the appropriate amount to be assessed. The Executive Director shall review the applicant's submission and notify the applicant within 10 days thereof, of the amount to be provided.